

Matthew Jacobs (SBN 331916)
THE JACOBS LAW FIRM, PC
5743 Corsa Ave, Suite 208
Westlake Village, CA 91362
(805) 601-7504
matt@jacobslawfirm.com

*Attorney for Defendants Unruly Agency LLC
and Behave Agency LLC*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

N.Z., R.M., B.L., S.M., and A.L.,
individually and on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

FENIX INTERNATIONAL LIMITED,
FENIX INTERNET LLC, BOSS
BADDIES LLC, MOXY
MANAGEMENT, UNRULY
AGENCY LLC (also d/b/a DYSRPT
AGENCY), BEHAVE AGENCY LLC,
A.S.H. AGENCY, CONTENT X, INC.,
VERGE AGENCY, INC., AND ELITE
CREATORS LLC,

Defendants.

CASE NO. 8:24-cv-01655-FWS-SSC

**DEFENDANTS UNRULY AGENCY
LLC AND BEHAVE AGENCY
LLC'S NOTICE OF MOTION AND
MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED
CLASS ACTION COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Filed Concurrently with [Proposed]
Order

Date: June 26, 2025

Time: 10:00 a.m.

Crtrm.: 10D

Assigned to Hon. Fred W. Slaughter

1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE** that on June 26, 2025 at 10:00 a.m., or as soon
4 thereafter as this matter may be heard in the above-entitled court, before the
5 Honorable Fred W. Slaughter, United States District Judge of the Central District of
6 California, Southern Division, in Courtroom 10D, Defendants Unruly Agency LLC
7 and Behave Agency LLC (collectively referred to as “Unruly”) will, and hereby do,
8 move for an order dismissing the First Amended Class Action Complaint (the
9 “FAC”) against Unruly pursuant to Federal Rule of Civil Procedure 12(b)(6) for the
10 following reasons:

11 **RICO And RICO Conspiracy** – Plaintiffs fail to state a RICO or RICO
12 conspiracy claim because they fail to allege the existence of a racketeering
13 enterprise, do not plead that Unruly engaged in any conduct in furtherance of any
14 such enterprise, or that Plaintiffs suffered recoverable damages.

15 **California Penal Code § 502** – This claim fails as a matter of law because
16 the statute applies only to “unauthorized” use, and Plaintiffs allege Unruly was
17 authorized to use Creators’ accounts. Plaintiffs also fail to allege any compensable
18 damages.

19 **Video Privacy Protection Act** – Plaintiffs fail to state a claim under this
20 statute because they fail to allege facts showing that: (1) Unruly is a video tape
21 service provider within the meaning of the statute; (2) Unruly ever possessed any
22 personally identifiable information covered by the statute; and (3) that Unruly ever
23 disclosed any such information outside of its ordinary course of business.

24 **California Invasion of Privacy Act and Electronic Communications**
25 **Privacy Act** – Plaintiffs fail to state claims under these statutes because they have
26 not alleged that Unruly or any other defendant “tapped” or “intercepted” any
27 communication. Even if that did occur (which it did not), Plaintiffs and all other
28 relevant individuals consented to any such interception.

1 Unruly further will, and hereby does, move for an order dismissing the claims
2 brought by Plaintiffs B.L., S.M., and A.L. (the “Non-California Plaintiffs”) in the
3 FAC against Unruly on the basis of *forum non conveniens* for the following reasons:

4 On April 9, 2025, the Court held the Non-California Plaintiffs are bound by
5 the forum-selection clause in the OnlyFans Terms of Service and that the forum
6 selection clause precludes them from being able to bring claims in this forum,
7 requiring dismissal. ECF No. 117 at 16.

8 As users of OnlyFans and by virtue of their alleged activities on OnlyFans,
9 the same forum-selection clause applies to Unruly and the claims the Non-California
10 Plaintiffs assert against Unruly. Accordingly, the claims asserted by the Non-
11 California Plaintiffs against Unruly should be dismissed for the same reasons they
12 were dismissed against OnlyFans.

13 This motion is based upon this Notice of Motion, the attached Memorandum
14 of Points and Authorities, the reply papers, the pleadings on file, and such other
15 evidence and argument as the Court may receive. Pursuant to Local Rule 7-3, on
16 May 19, 2025 (the first business day after undersigned counsel for Unruly was
17 retained), counsel for Unruly met and conferred with counsel for Plaintiffs to
18 discuss the grounds for its motion.

19
20 DATED: May 23, 2025

The Jacobs Law Firm, PC

21
22 By:


Matthew Jacobs

23
24 *Attorney for Unruly Agency LLC and*
25 *Behave Agency LLC*
26
27
28

TABLE OF CONTENTS

		<u>Page</u>
1		
2		
3	TABLE OF CONTENTS.....	i
4	TABLE OF AUTHORITIES	iii
5	MEMORANDUM OF POINTS AND AUTHORITIES	1
6		
7	I. INTRODUCTION	1
8	II. LEGAL STANDARDS	2
9	III. PLAINTIFFS FAIL TO PLEAD A CIVIL RICO VIOLATION	3
10	A. Plaintiffs Fail to Allege a RICO Enterprise.....	3
11	1. Plaintiffs Allege Formation of an Enterprise Before Its	
12	Supposed Members Even Existed	3
13	2. Plaintiffs Fail to Plead that Alleged Enterprise Members	
14	Even Knew Each Other Existed	4
15	3. Plaintiffs Fail to Plead Coordination	5
16	4. Plaintiffs Fail to Plead a Common Purpose	6
17	B. Unruly Did Not Engage in Any Conduct in Furtherance of the	
18	Alleged RICO Scheme	8
19	1. Unruly Did Not Give or Take Directions.....	9
20	2. Plaintiffs Fail to Allege Unruly Committed A Predicate	
21	Act	9
22	3. OnlyFans’ Allegedly Fraudulent Acts Cannot Be Imputed	
23	to Unruly	11
24	C. Plaintiffs Have Failed to Allege the Purported RICO Activity	
25	Caused Them Any Damages	11
26	IV. PLAINTIFFS FAIL TO PLEAD RICO CONSPIRACY	13
27	V. UNRULY COULD NOT AND DID NOT VIOLATE VPPA	13
28	A. Unruly Is Not Subject to VPPA.....	13

1	B. Unruly Did Not Collect PII	14
2	C. Any Disclosure by Unruly Was Permitted Under the VPPA	15
3	VI. PLAINTIFFS FAIL TO ALLEGE A VIOLATION OF CALIFORNIA	
4	PENAL CODE § 502.....	15
5	VII. PLAINTIFFS FAIL TO ALLEGE A VIOLATION OF CIPA OR THE	
6	WIRETAP ACT.....	16
7	VIII. NON-CALIFORNIA PLAINTIFFS’ CLAIMS SHOULD BE	
8	DISMISSED ON THE BASIS OF <i>FORUM NON CONVENIENS</i>	16
9	IX. LEAVE TO AMEND SHOULD BE DENIED	16
10	X. CONCLUSION.....	16
11	CERTIFICATE OF COMPLIANCE	17

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

Cases

Ashcroft v. Iqbal, 556 U.S. 662 (2009)2, 3

Blue Oak Med. Grp. v. State Comp. Ins. Fund, 809 F. App'x 344 (9th Cir. 2020). ... 9

Boyle v. United States., 556 U.S. 938 (2009)..... 6

Canyon City v. Syngenta Seeds, Inc., 519 F.3d 969 (9th Cir. 2008)..... 12

Chaset v. Fleer/Skybox Intern., LP, 300 F.3d 1083 (9th Cir. 2002). 11

Coronavirus Rep. v. Apple, Inc., 85 F.4th 948 (9th Cir. 2023)..... 10

Cruz v. FXDirectDealer, LLC, 720 F.3d 115 (2d Cir. 2013)..... 7

Eclectic Props. E., LLC v. Marcus & Millichap Co., 751 F.3d 990 (9th Cir. 2014) .. 3

Eichenberger v. ESPN, Inc., 876 F.3d 979 (9th Cir. 2017) 14

Gardner v. Starkist Co., 418 F. Supp.3d 443 (N. D. Cal. 2019)..... 11

Gomez v. Guthy-Renker, LLC, 2015 WL 4270042 (C.D. Cal. July 13, 2015)..... 8

Hernandez v. Chewy, Inc., 2023 WL 9319236 (C.D. Cal. Dec. 13, 2023)..... 13

In re Chrysler-Dodge-Jeep Prods. Liab. Litig., 295 F.Supp.3d 927 (N.D. Cal. 2018) 7

In re Hulu Privacy Litig., 2014 WL 1724344 (N.D. Cal. Apr. 28, 2014)..... 14

In re Jamster Mktg. Litig., 2009 WL 1456632 (S.D. Cal. May 22, 2009)..... 5, 7, 8

In re Toyota Motor Corp. Unintended Acceleration Prods. Liab. Litig., 826 F. Supp. 2d 1180 (C.D. Cal. 2011) 8

Khalid v. Microsoft Corp., 2023 WL 2493730 (9th Cir. Mar. 14, 2023) 13

Martin v. Meredith Corp., 657 F.Supp. 3d 277 (S.D.N.Y. 2023)..... 14

Moore v. Kayport Package Exp., Inc., 885 F.2d 531 (9th Cir. 1989)..... 9

Nayab v. Cap. One Bank (USA), N.A., 942 F.3d 480 (9th Cir. 2019)..... 10

Nickelodeon Consumer Privacy Litig., 2014 WL 3012873 (D.N.J. July 2, 2014) ... 14

Odom v. Microsoft Corp., 486 F.3d 541 (9th Cir. 2007) (en banc). 5

1	<i>Oscar v. Univ. Students Co-op. Ass’n</i> , 965 F.2d 783 (9th Cir. 1992).....	3, 11
2	<i>Park v. Thompson</i> , 851 F.3d 910 (9th Cir. 2017)	2
3	<i>Reves v. Ernst & Young</i> , 507 U.S. 170 (1993).....	8
4	<i>Shaw v. Nissan North America</i> , 220 F.Supp.3d 1046 (C.D. Cal. 2016)	5, 6
5	<i>Sihler v. Fulfillment Lab, Inc.</i> , 2020 WL 7226436 (S.D. Cal. Dec. 8, 2020)	8
6	<i>Sterk v. Redbox Automated Retail LLC</i> , 770 F.3d 618 (7th Cir. 2014).....	15
7	<i>Uce v. Oral Aesthetic Advocacy Grp., Inc.</i> , 2024 WL 3050720 (C.D. Cal. Feb. 23,	
8	2024)	6, 11
9	<i>United States v. Fernandez</i> , 388 F.3d 1199 (9th Cir. 2004)	5
10	<i>United States v. Turkette</i> , 452 U.S. 576 (1981)	3
11	<i>Walter v. Drayson</i> , 538 F.3d 1244 (9th Cir. 2008).	9
12	<i>Wimo Labs LLC v. eBay Inc.</i> , 2016 WL 11507382 (C.D. Cal. Jan. 28, 2016)	4, 5
13	Statutes	
14	18 U.S.C. § 2710(a)(4).....	13
15	18 U.S.C. § 2710(b)	13, 14
16	18 U.S.C. 1961(3)	4
17	18 U.S.C. 1962(c)	4, 13
18	18 U.S.C. 2710(a)(2).....	15
19	18 U.S.C. 2710(b)(E)	15
20	Rules	
21	Federal Rule of Civil Procedure 12(b)(6)	2
22	Federal Rule of Civil Procedure 9(b).....	9
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION¹**

3 Defendants Unruly Agency LLC and Behave Agency LLC (collectively
4 referred to as “Unruly”) are management and consulting agencies that, among other
5 things, assist individual content creators (“Creators”) to operate accounts on
6 OnlyFans. FAC ¶¶205-209. OnlyFans is a social media and content-sharing
7 platform on which Creators offer content to others (“Fans”) and on which Fans can
8 direct message Creators’ accounts. *Id.* ¶¶8-9, 14.

9 According to the FAC, Plaintiffs are five users of OnlyFans. Plaintiffs
10 concede Creators have “subscriber bases so large” it would be “physically
11 impossible for a single individual” to interact with Fans “on a direct personal basis.”
12 *Id.* ¶179. Plaintiffs nonetheless claim they were misled into thinking they were
13 talking directly to Creators, when they allegedly were instead talking to “chatters”
14 Unruly and the other defendant agencies (together, the “Agency Defendants”)
15 engaged to impersonate the Creators. *See, e.g., id.* ¶¶257-259. The facts alleged in
16 the FAC fail to establish that any Plaintiff is entitled to relief on any of their
17 theories. For the reasons that follow, all Plaintiffs’ claims must be dismissed.

18 **RICO and RICO Conspiracy.** The indispensable foundation of a civil RICO
19 claim is that defendants form an enterprise and then coordinate with it to pursue a
20 common purpose. Fatally, Plaintiffs allege that the supposed RICO enterprise was
21 formed *four years before* Unruly even existed. Plaintiffs also fail to allege facts
22 showing OnlyFans even knew Unruly (or any Agency Defendant) existed, that any
23 Agency Defendant knew any other Agency Defendant existed, that any enterprise
24

25 ¹ In the interest of judicial efficiency and to avoid repetition with codefendants’
26 contemporaneously filed motions to dismiss, this memorandum focuses primarily on
27 allegations against Unruly and incorporates (often verbatim) legal arguments asserted in
28 Defendant Moxy Management’s May 23, 2025 Motion to Dismiss (the “Moxy Motion”).
Unruly joins the Moxy Motion and the May 23, 2025 Motion to Dismiss of Elite Creators
LLC and Creators Incorporated (the “Creators Inc. Motion”).

1 member had a *single* communication with any other coordinating alleged RICO
2 activity, or that the members even shared a common purpose. At *best*, Plaintiffs
3 allege only that various defendants acted independently in pursuit of their own
4 economic interests, which has *never* been held to violate RICO.

5 **California Penal Code § 502.** This claim fails as a matter of law because the
6 statute applies only to “unauthorized” use, and Plaintiffs allege Unruly was
7 authorized to use Creators’ accounts. Plaintiffs also fail to allege any compensable
8 damages.

9 **Video Privacy Protection Act (“VPPA”).** The VPPA governs only the non-
10 business disclosure of personally identifying information (“PII”) by videotape
11 providers. Plaintiffs fail to allege that Unruly is a videotape provider, that it ever
12 possessed PII, or that any disclosure was wrongful.

13 **California Invasion of Privacy Act (“CIPA”) and Electronic**
14 **Communications Privacy Act (“Wiretap Act”).** These claims fail because
15 Plaintiffs nowhere allege Unruly tapped any wire or “intercepted” any
16 communication. Mere *impersonation* of another, which is all Plaintiffs allege, is not
17 actionable under either statute. Plaintiffs’ Wiretap Act claim also fails because the
18 Creators consented to any alleged “interception.”

19 **II. LEGAL STANDARDS**

20 Federal Rule of Civil Procedure 12(b)(6) requires dismissal for “failure to
21 state a claim upon which relief can be granted.” “To survive a motion to dismiss, a
22 complaint must contain sufficient factual matter, accepted as true, to ‘state a claim
23 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
24 “A claim has facial plausibility when the plaintiff pleads factual content that allows
25 the court to draw the reasonable inference that the defendant is liable for the
26 misconduct alleged.” *Id.* Generally, courts accepts factual allegations as true and
27 view them in the light most favorable to plaintiffs. *Park v. Thompson*, 851 F.3d 910,
28 918 (9th Cir. 2017). But courts are “not bound to accept as true a legal conclusion

1 couched as a factual allegation” and will accept such a conclusion only where it is
2 adequately “supported by factual allegations.” *Iqbal*, 556 U.S. at 664, 678.

3 **III. PLAINTIFFS FAIL TO PLEAD A CIVIL RICO VIOLATION**

4 The civil RICO statute was “intended to combat organized crime, not to
5 provide a federal cause of action and treble damages to every tort plaintiff.” *Oscar v.*
6 *Univ. Students Co-op. Ass’n*, 965 F.2d 783, 786 (9th Cir. 1992). Consequently, a
7 plaintiff states a claim for a civil RICO violation only if it plausibly alleges that a
8 defendant participated in “(1) the conduct of (2) an enterprise that affects interstate
9 commerce (3) through a pattern (4) of racketeering activity” *Eclectic Props. E.,*
10 *LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014). Plaintiffs’
11 alleged RICO scheme rests on nothing more than bare allegations that entities who
12 never communicated with one another pursued economic gain in a manner that
13 involved vague fraudulent statements. That has *never* been sufficient to plead a
14 RICO scheme and is not sufficient now.

15 **A. Plaintiffs Fail to Allege a RICO Enterprise**

16 A RICO enterprise is “a group of persons associated together for a common
17 purpose of engaging in a course of conduct” violating the RICO statute. *United*
18 *States v. Turkette*, 452 U.S. 576, 583 (1981). Accordingly, Plaintiffs must plead (1)
19 “a common purpose,” (2) “a structure or organization,” and (3) “longevity necessary
20 to accomplish the purpose.” *Eclectic Props.*, 751 F.3d at 997. Plaintiffs allege a so-
21 called “Content Fraud Enterprise” involving OnlyFans, the Agency Defendants, and
22 their “Represented Creators.” FAC ¶361. Far from pleading facts supporting that
23 such an enterprise ever existed, Plaintiffs plead facts showing it did *not*.

24 **1. Plaintiffs Allege Formation of an Enterprise Before Its** 25 **Supposed Members Even Existed**

26 Perhaps the most obvious example of Plaintiffs’ failure to plead a RICO
27 enterprise is their allegation it “has been ongoing since approximately 2016”—*four*
28 *years before any Agency Defendant existed. Id.* ¶377. No Agency Defendant was

1 formed/incorporated before March 2020. *Id.* ¶¶46-54 (alleging formation dates
2 between from 2020-2022). It is simply not possible for a RICO enterprise to have
3 existed *before* its members existed. *See* 18 U.S.C. 1962(c) (requiring existence of a
4 “person” for RICO liability); 18 U.S.C. 1961(3) (“‘person’ includes any individual
5 or entity capable of holding a legal or beneficial interest in property”).² Plaintiffs’
6 enterprise allegations fail to overcome this lowest of hurdles.

7 **2. Plaintiffs Fail to Plead that Alleged Enterprise Members**
8 **Even Knew Each Other Existed**

9 Plaintiffs’ allegations regarding the purported RICO enterprise *after* the
10 Agency Defendants were formed fare no better because they lack facts showing
11 OnlyFans knew the Agency Defendants—not just agencies in general—existed, or
12 that the Agency Defendants knew each other existed.

13 As to OnlyFans’s knowledge of the Agency Defendants, Plaintiffs generally
14 allege only that OnlyFans knew content creators could use agencies. FAC ¶¶130,
15 146. But the sole allegation supporting Plaintiffs’ conclusory assertion that
16 OnlyFans was aware of the *Agency Defendants*, *id.* ¶370, is an allegation that in
17 2023 *one* of the Agency Defendants collaborated with OnlyFans, *id.* ¶6. And
18 OnlyFans’ alleged knowledge that *one* Agency Defendant existed in 2023 says
19 nothing about whether OnlyFans knew others agencies (like Unruly) existed before
20 this action began. If OnlyFans did not know Unruly existed, it plainly cannot have
21 been in a RICO enterprise with it. *Wimo Labs LLC v. eBay Inc.*, Case No. 15-cv-
22 1330-JLS-KES, 2016 WL 11507382, at *4 (C.D. Cal. Jan. 28, 2016) (RICO claim
23 failed absent allegations enterprise members “were even aware of one another’s
24 existence as participants in a scheme to defraud.”).

25
26 ² To the extent Plaintiffs argue an enterprise existed prior to 2020 between OnlyFans and
27 the Creators the Agency Defendants now allegedly represent, they have failed to allege any
28 supporting facts. Plaintiffs have not, for example, alleged Creators used chatters without
Agency Defendants. Nor have they alleged any fraud before 2021. *See* FAC ¶¶385-402
(alleging OnlyFans’s predicate acts from January 2021 onward).

Moreover, the FAC is totally silent regarding the Agency Defendants’ knowledge of each other. Again, persons cannot form a RICO enterprise with members they do not know exist. *Id.*; *see also U.S. v. Fernandez*, 388 F.3d 1199, 1230 (9th Cir. 2004) (defendant can only participate in RICO scheme where it is “aware of the essential nature and scope of the enterprise”).

3. Plaintiffs Fail to Plead Coordination

Plaintiffs’ failure to plead facts suggesting that alleged members of the “enterprise” even knew each other existed prevents them from adequately alleging “evidence of an ongoing organization, formal or informal, and evidence that the various associates function as a continuing unit.” *Odom v. Microsoft Corp.*, 486 F.3d 541, 552 (9th Cir. 2007) (en banc).

Recognizing they must plead coordination, Plaintiffs conclusorily allege the existence of supposed “financial ties and coordination of activities between the OnlyFans Defendants and the Agency Defendants.” FAC ¶¶378; 422 (alleging in conclusory fashion various supposed “communications”). But fatally, *nowhere* in the 546-paragraph FAC do Plaintiffs actually allege facts supporting that such coordination *ever occurred*. Indeed, Plaintiffs do not allege a *single* communication between *any* alleged enterprise members—not between OnlyFans and any Agency Defendant or between Agency Defendants. Without such allegations, Plaintiffs have not met their pleading burden. *Shaw v. Nissan N. Am. Inc.*, 220 F.Supp.3d 1046, 1057 (C.D. Cal. 2016) (RICO claim dismissed where plaintiff failed to allege facts supporting coordination); *Wimo Labs*, 2016 WL 11507382 at *4 (absence of allegations of coordination between alleged enterprise members meant “Plaintiff fail[ed] to allege any facts suggesting that they combined as an enterprise”); *In re Jamster Mktg. Litig.*, Case No. 05-cv-819-JM-CAB, 2009 WL 1456632, at *5 (S.D. Cal. May 22, 2009) (merely alleging defendants were a part of a fraud insufficient to plead purported enterprise members “work[ed] together to achieve” a common purpose).

1 As to the supposed “financial ties,” Plaintiffs allege only that each Agency
2 Defendant earns money through their relationships with Creators who, in turn, earn
3 money through their relationships with OnlyFans. Such bare allegations are, again,
4 insufficient to plead coordination. *Uce v. Oral Aesthetic Advocacy Grp., Inc.*, 23-cv-
5 3187-CBM-MRW 2024 WL 3050720, at *7 (C.D. Cal. Feb. 23, 2024) (mere fact
6 that different defendants had some economic relationship to a single entity that
7 allegedly engaged in fraudulent activity insufficient to allege a RICO enterprise).

8 Far from alleging coordination between OnlyFans and the Agency
9 Defendants, Plaintiffs repeatedly allege OnlyFans had policies *against* the Agency
10 Defendants’ alleged use of chatters. “None of what agencies (including Agency
11 Defendants) are doing to perpetuate the Chatter Scams is actually ‘allowed’ by
12 OnlyFans’ ‘Terms of Service,’” FAC ¶163; OnlyFans “policies contain specific
13 terms” that “prohibit Creators from allowing anyone else to even access their
14 accounts,” such as chatters, *id.* ¶130. The allegations that OnlyFans and the Agency
15 Defendants were at odds contradict Plaintiffs’ conclusory coordination allegations—
16 and, therefore, doom their RICO claim. *Shaw*, 220 F.Supp.3d at 1057 (plaintiff
17 failed to plead coordination where RICO enterprise members took actions that
18 conflicted with the alleged common purpose).

19 Lacking factual allegations supporting coordination, Plaintiffs have alleged
20 only that “purported enterprise members acted independently and without
21 coordination,” which the Supreme Court has conclusively held “insufficient to
22 adequately plead a RICO enterprise.” *Boyle v. United States.*, 556 U.S. 938, 947 n.4
23 (2009).

24 **4. Plaintiffs Fail to Plead a Common Purpose**

25 Plaintiffs also fail to allege facts sufficient to show that Defendants even
26 *could* have shared the supposed “common purpose” of using “chatters to extract
27 Premium Content Fees from Plaintiffs and Class Members,” let alone facts to show
28 that they actually did so. FAC ¶362.

1 While Plaintiffs allege OnlyFans is the central player in the purported RICO
2 enterprise because it represented to Plaintiffs that they could “direct message”
3 Creators and “build ‘genuine’ and ‘authentic’ connections,” *id.* ¶¶363-365, they
4 concede that, at best, their allegations merely “support[] an inference that OnlyFans
5 is aware of the Chatter Scams,” *id.* ¶129. Plaintiffs’ admitted inability to plead facts
6 showing OnlyFans *actually knew* of the alleged “Chatter Scams” precludes them
7 adequately alleging that OnlyFans and the Agency Defendants shared the “common
8 purpose” of making money through that alleged scam.³ *Cruz v. FXDirectDealer,*
9 *LLC*, 720 F.3d 115, 121 (2d Cir. 2013) (RICO claim failed where participants
10 “generally were unaware of [alleged] deceptive practices”); *In re Jamster Mktg.*
11 *Litig.*, 2009 WL 1456632, at *5 (“At a minimum, Plaintiffs must set forth
12 particularized allegations that [Defendants] had the common purpose of increasing
13 their revenues by fraudulent means.”).

14 Plaintiffs’ allegations that OnlyFans “overlooked or permitted” or “willfully
15 ignored” agencies and chatters, FAC ¶100, 157—rather than undertaking affirmative
16 actions to facilitate them—further underscores the absence of common purpose
17 allegations. Merely permitting the activity of others falls far short of showing a
18 “common purpose” among RICO enterprise participants. *See In re Chrysler-Dodge-*
19 *Jeep Prods. Liab. Litig.*, 295 F.Supp.3d 927, 983 (N.D. Cal. 2018) (merely “failing
20 to stop illegal activity[] is not sufficient” to show a common purpose); *In re*
21 *Jamster Mktg. Litig.*, 2009 WL 1456632, at *5 (plaintiffs’ concusory allegation
22 defendants were “fraudulently collecting monies” insufficient to plead a common
23 purpose).

24 Thus, at best, Plaintiffs have only alleged that each Defendant acted
25 independently and in their own economic self-interests. “Courts have
26

27 ³ OnlyFans’s policies against agencies only further support the absence of a common
28 purpose. *See* Section III.A.3, *supra*.

1 overwhelmingly rejected” attempts by plaintiffs to “characterize routine commercial
2 relationships” as a RICO enterprise, and this Court should do the same. *Gomez v.*
3 *Guthy-Renker, LLC*, Case. No. 14-cv-1423-JGB-KK, 2015 WL 4270042, at *8
4 (C.D. Cal. July 13, 2015).

5 While Plaintiffs allege the RICO enterprise existed for “the common purpose
6 of fraudulently increasing the amount and number of Premium Content Fees each
7 Fan pays,” FAC ¶376, courts routinely reject RICO claims, like Plaintiffs’, that
8 merely describe routine business activity as “fraudulent.” *See, e.g., In re Jamster*
9 *Mktg. Litig.*, 2009 WL 1456632, at *5 (dismissing RICO claim because “[w]ithout
10 the adjectives, the allegations allege conduct consistent with ordinary business
11 conduct and an ordinary business purpose”). Indeed, Plaintiffs do little more than
12 characterize Unruly’s entire business as a fraud perpetrated through a RICO
13 enterprise. “[A]lleg[ing] no more than that Defendants’ primary business activity . . .
14 was conducted fraudulently” is also insufficient to state a RICO claim. *In re Toyota*
15 *Motor Corp. Unintended Acceleration Prods. Liab. Litig.*, 826 F. Supp. 2d 1180,
16 1202-03 (C.D. Cal. 2011) (dismissing RICO claim alleging defendants’ business
17 was operated fraudulently); *Sihler v. Fulfillment Lab, Inc.*, Case No. 20-cv-1528-H-
18 MSB, 2020 WL 7226436, at *12-13 (S.D. Cal. Dec. 8, 2020) (merely identifying
19 business transactions, even those that show fraud occurred, is insufficient to plead
20 RICO).

21 **B. Unruly Did Not Engage in Any Conduct in Furtherance of the**
22 **Alleged RICO Scheme**

23 RICO liability requires that “defendants conducted or participated in the
24 conduct of the ‘enterprise’s affairs,’ not just their *own* affairs.” *Reves v. Ernst &*
25 *Young*, 507 U.S. 170, 185 (1993) (emphasis in original). In evaluating whether
26 defendants played some part in directing the affairs of an enterprise, this Circuit
27 considers whether they (1) gave or took directions; (2) occupied a position in the
28 “chain of command” through which the affairs of the enterprise were conducted; (3)

1 knowingly implemented decisions of upper management; or (4) was indispensable
2 to the achievement of the enterprise's goal. *See Walter v. Drayson*, 538 F.3d 1244,
3 1249 (9th Cir. 2008). Plaintiffs have not adequately pled any of these factors.

4 **1. Unruly Did Not Give or Take Directions**

5 The absence of any allegation Unruly ever communicated with OnlyFans or
6 the other Agency Defendants, *see supra* Section III.A.3, means Plaintiffs have not
7 pled Unruly did anything to direct or participate in the conduct of the enterprise's
8 affairs. *Walter*, 538 F.3d at 1249 (although plaintiff established defendant's
9 "involve[ment]" in the enterprise, RICO claim nonetheless failed due to absence of
10 allegations showing defendant had "some part in directing its affairs").

11 **2. Plaintiffs Fail to Allege Unruly Committed A Predicate Act**

12 Plaintiffs' RICO claim is based on alleged wire fraud. FAC ¶382. But they
13 fail to plead that Unruly engaged in any such fraud, let alone with the degree of
14 particularity required under Federal Rule of Civil Procedure 9(b). *Blue Oak Med.*
15 *Grp. v. State Comp. Ins. Fund*, 809 F. App'x 344, 345 (9th Cir. 2020).

16 The *only* allegedly fraudulent acts by Unruly are "communications through
17 the internet to Plaintiffs and Class Members" by chatters, "falsely representing they
18 were Creators, to convince Plaintiffs and Class Members to pay Premium Content
19 Fees." FAC ¶404. Specifically, Plaintiffs allege they paid money to subscribe to
20 accounts of five Unruly-affiliated Creators: (1) Plaintiff B.L. subscribed to Tina
21 Louise, Kayla Lauren, Anna Louise, and Ryann Murphy; and (2) Plaintiff R.M.
22 subscribed to Emily Elizabeth. *Id.* ¶¶406-409, 420. These allegations do not satisfy
23 Plaintiffs' burden to plead fraud with specificity.

24 Plaintiffs allege Unruly represented these five creators "on information and
25 belief," but *without* any supporting facts, which is insufficient as a matter of law. *Id.*
26 ¶213. *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989)
27 ("allegations of fraud based on information and belief usually do not satisfy the
28

1 particularity requirements under rule 9(b).”). *Nayab v. Cap. One Bank (USA), N.A.*,
2 942 F.3d 480, 493–94 (9th Cir. 2019) (“[A]llegations ‘based on information and
3 belief may suffice,’ ‘so long as the allegations are accompanied by a statement of
4 facts upon which the belief is founded.’”). Even the allegation that Agency
5 Defendants operated the accounts of affiliated Creators is insufficiently made “[o]n
6 information and belief.” *Id.* ¶103. Absent alleged facts supporting these claims,
7 Plaintiffs’ fraud allegations fail.

8 Further, Plaintiffs do not allege any facts supporting that Unruly, or chatters it
9 engaged, ever “falsely represent[ed] they were Creators, to convince Plaintiffs and
10 Class Members to pay Premium Content Fees.” *Id.* ¶404. The *closest* Plaintiffs come
11 is alleging that *one* Plaintiff, R.M., “confronted Emily Elizabeth via direct message
12 and she said it was her replying to messages.”⁴ *Id.* ¶270. But that allegation lacks the
13 minimum required “who, what, when, where, and how” of an alleged
14 misrepresentation to support a fraud claim. *Coronavirus Rep. v. Apple, Inc.*, 85 F.4th
15 948, 958 (9th Cir. 2023). And, fatally, there is no allegation that any response by
16 Emily Elizabeth *was false*—*i.e.*, that the response was in fact from a chatter or that
17 she even used chatters. In fact, Plaintiffs have plead themselves out of being able to
18 argue that this communication was from a chatter by alleging that “agencies contract
19 with chatters to conduct *most*” of the communications “between the Creators and the
20 Fans,” and not *all*. FAC ¶104 (emphasis added).

21 While Plaintiffs allege various other supposedly “fraudulent” acts, their
22 failure to allege any specifics regarding those acts precludes them from relying on
23 such acts to support their RICO claim. FAC ¶422 (listing alleged acts undertaken by
24 “Defendants” generally); *Coronavirus Rep.*, 85 F.4th at 958.

25
26 ⁴ Plaintiffs never allege that any Unruly-affiliated Creator other than Emily Elizabeth
27 represented to any Plaintiff other than R.M. that she was the individual talking to a
28 Plaintiff and not a chatter. Accordingly, no other Plaintiff can have alleged any fraud by
Unruly.

1 **3. OnlyFans’ Allegedly Fraudulent Acts Cannot Be Imputed to**
2 **Unruly**

3 Finally, even assuming Plaintiffs sufficiently pled that *OnlyFans*
4 misrepresented that all communications were authentically with Creators and not
5 chatters (which it did not, FAC ¶384), Plaintiffs have failed to show that such
6 conduct should be imputed to Unruly. The mere performance of legitimate business
7 activities that *another* might use in a fraudulent manner is not conduct in furtherance
8 of a RICO enterprise. *Gardner v. Starkist Co.*, 418 F. Supp.3d 443, 461 (N. D. Cal.
9 2019) (that the *seller* of canned tuna misrepresented that it was “dolphin safe” did
10 not mean that the fisherman, importers, storers, canners and processors had engaged
11 in fraudulent RICO conduct); *Uce*, 2024 WL 3050720, at *5 (alleged members of
12 RICO scheme did not commit RICO conduct where they “simply perform[ed]
13 services for the enterprise”). Allegations that Unruly’s engagement of chatters
14 rendered untrue OnlyFans’ alleged representations does not show actionable RICO
15 conduct by Unruly.

16 **C. Plaintiffs Have Failed to Allege the Purported RICO Activity**
17 **Caused Them Any Damages**

18 To plead a RICO claim, a plaintiff must allege the RICO scheme caused a
19 “concrete financial loss.” *Oscar v. Univ. Students Coop. Co-Operative Ass’n*, 965
20 F.2d 783, 785 (9th Cir.1992). Plaintiffs allege they were harmed because they spent
21 money on “Premium Content Fees,” including paying more than they would have
22 had they known about chatters, and their “lost expectation” of speaking directly with
23 Creators. FAC ¶¶433-437. Mere “lost expectation” of talking to Creators rather than
24 a chatter is not a compensable harm under the RICO statute. *Chaset v. Fleer/Skybox*
25 *Int’l., LP*, 300 F.3d 1083, 1087 (9th Cir. 2002). And Plaintiffs have failed to allege
26 facts showing they suffered any financial harm as a result of the alleged scheme.
27
28

1 Plaintiffs define “Premium Content Fees” as “Subscription Fees, PPV
2 Charges, and Creator Tips”—*i.e.*, *all* the fees Plaintiffs spent on any content *for any*
3 *reason*, such as to access explicit pictures, not solely for talking to Creators. *Id.* ¶77.

4 Regarding “Subscription Fees,” Plaintiffs affirmatively allege they were paid
5 for access to a Creator’s entire account and certain highly desirable content. *See*,
6 *e.g.*, *id.* ¶404, 419 (alleging S.M. became a VIP subscriber to a non-Unruly-
7 affiliated Creator, but the content he received was not as explicit as he hoped).
8 Significantly, Subscription Fees were *not* paid for the sole purpose of talking to
9 Creators; indeed, some Plaintiffs are *still* subscribed to Creators despite alleging
10 chatters operate their accounts. *See, e.g., id.* ¶404, 420. (alleging R.M. is still
11 subscribed to Unruly-affiliated Emily Elizabeth).

12 Similarly, “PPV” or “Pay-Per-View” charges, which comprise most of the
13 Premium Content Fees, are paid to view explicit pictures—*not to speak to Creators*.
14 *Id.* ¶111. PPV charges are irrelevant because Plaintiffs do not allege any supposed
15 RICO activity regarding PPV content or that PPV content was fraudulent in any way
16 (which it was not). *Id.* ¶¶363-365.

17 As for “Creator Tips,” Plaintiffs affirmatively allege that they were paid for
18 various reasons *other than* because Plaintiffs believed they were talking to a
19 Creator. *Id.* ¶72 (alleging tips were paid for “custom content, special requests,
20 advice, recipes, lessons, or almost anything else”).

21 Because the alleged Premium Content Fees purportedly were paid for reasons
22 *other than* talking directly with Creators, Plaintiffs have failed to plead their alleged
23 financial harm was caused by the alleged RICO activity. *Canyon City v. Syngenta*
24 *Seeds, Inc.*, 519 F.3d 969, 975, 980-81 (9th Cir. 2008) (RICO claim dismissed
25 where Plaintiff failed to plead the alleged RICO activity, rather than other acts,
26 caused its financial loss).

1 **IV. PLAINTIFFS FAIL TO PLEAD RICO CONSPIRACY**

2 Plaintiffs’ RICO conspiracy claim is derivative of its substantive RICO claim.
3 When, as here, a plaintiff fails to plead a substantive RICO claim, they necessarily
4 also fail to plead a RICO conspiracy claim under 18 U.S.C. § 1962(c). *Khalid v.*
5 *Microsoft Corp.*, Case No. 20-35921, 2023 WL 2493730, at *1 (9th Cir. Mar. 14,
6 2023) (“Because [plaintiff] failed to state a RICO claim . . . he also failed to state a
7 RICO conspiracy claim”). Accordingly, Plaintiffs’ RICO conspiracy claim also
8 fails.

9 **V. UNRULY COULD NOT AND DID NOT VIOLATE VPPA**

10 **A. Unruly Is Not Subject to VPPA**

11 Only a “video tape service provider” can be liable under VPPA. 18 U.S.C. §
12 2710(b) (prohibiting acts by “[a] video tape service provider”). Plaintiffs fail to
13 allege facts, rather than legal conclusions (FAC ¶452), supporting that Unruly
14 qualifies as a “video tape service provider,” which the statute defines as “any
15 person, engaged in the business . . . of rental, sale, or delivery of prerecorded video
16 cassette tapes or similar audio visual materials.” 18 U.S.C. § 2710(a)(4).

17 As an initial matter, Plaintiffs allege Unruly managed Creators and facilitated
18 chatters. *Id.* ¶¶205-216. Plaintiffs nowhere allege that delivering video content is
19 even a small part of Unruly’s business, let alone a “central” part as VPPA requires.
20 *Hernandez v. Chewy, Inc.*, Case No. 23-cv-5620-HDV-RAO, 2023 WL 9319236, at
21 *3 (C.D. Cal. Dec. 13, 2023) (“[C]ourts in the Ninth Circuit have recognized
22 consistently that delivering video content must be central to the defendant’s business
23 or product for the VPPA to apply.”)

24 Further, Plaintiffs nowhere allege that Unruly *in particular* ever provided any
25 audiovisual materials to any Plaintiff. Plaintiffs’ generalized allegations that certain
26 Plaintiffs “viewed videos sent to [them] via direct message through Creators’
27 accounts—some of which [they] had specifically requested” is insufficient to show
28 that Unruly itself, rather than the Creator, some third party, or some other Agency

Defendant, ever provided such materials. FAC ¶¶268, 283; *Martin v. Meredith Corp.*, 657 F.Supp. 3d 277, 285 (S.D.N.Y. 2023) (dismissing VPPA claim because the “handful of generalized allegations saying [defendant] shares video titles” with third parties were unsupported by “specific allegations”).

B. Unruly Did Not Collect PII

The VPPA prohibits “knowingly disclos[ing], to any person, personally identifiable information [(“PII”)] concerning any consumer” of the video tape service provider. 18 U.S.C. § 2710(b)(1). PII is limited to “information that would readily permit an ordinary person to identify a specific individual’s video-watching behavior,” and must include “some information that can be used to identify an individual.” *Eichenberger v. ESPN, Inc.*, 876 F.3d 979, 984 (9th Cir. 2017). PII *does not* include “information” that “*cannot* identify an individual unless it is combined with other data” through a method “an ordinary person could not use.” *Id.* at 986. Thus, “anonymous usernames” alone are not PII because they do not “identify an actual, identifiable person and link that person to a specific video choice.” *In re Nickelodeon Consumer Privacy Litig.*, 2014 WL 3012873, at *12 (D.N.J. July 2, 2014); *see also In re Hulu Privacy Litig.*, 2014 WL 1724344, at *12 (N.D. Cal. Apr. 28, 2014) (disclosing “a unique identifier—without more—[does not] violate[]” VPPA).

Plaintiffs’ failure to plead they ever asked for any videos from any Unruly-affiliated Creator necessarily precludes them from adequately alleging that Unruly ever possessed PII that it even *could* have wrongfully disclosed under the VPPA. But even if they had plead that, Plaintiffs admit the only information disclosed to chatters was the Fans’ “communication history,” which displays only “the Fan’s username” and not their real name.⁵ FAC ¶¶449-451. Indeed, Plaintiffs concede that

⁵ OnlyFans is the only Defendant that allegedly collected information such as email addresses and telephone numbers. FAC ¶449.

1 while a “username” can be used to “view the Fan’s profile on OnlyFans,” usernames
2 are “pseudonyms” employed “as a matter of course . . . to remain anonymous.” *Id.*
3 ¶¶27, 450; *see Nickelodeon*, 2014 WL 3012873, at *12 (ordinary people cannot use
4 “anonymous information about home computers, IP addresses, anonymous
5 usernames, even a user’s gender and age... to identify an actual, identifiable
6 person”).

7 Accordingly, Plaintiffs have failed to allege that Unruly ever possessed any
8 PII that it even *could* have disclosed in violation of the VPPA.

9 **C. Any Disclosure by Unruly Was Permitted Under the VPPA**

10 Even if Unruly were subject to the VPPA (which it is not) and both possessed
11 and disclosed PII (which it did not), its disclosure would be lawful so long as it
12 occurred in the “ordinary course of business.” 18 U.S.C. 2710(b)(E). Under the
13 VPPA, the “ordinary course of business” includes “order fulfillment [and] request
14 processing.” 18 U.S.C. 2710(a)(2). Here, Plaintiffs fatally concede that chatters “sell
15 Fans content from the Creator’s Vault and/or obtain Fans’ requests for specific
16 ‘custom’ content” and disclose information to Unruly and/or the Creator for the
17 purpose of fulfilling the request.⁶ FAC ¶112(b)-(d). That is perfectly lawful. *Sterk v.*
18 *Redbox Automated Retail LLC*, 770 F.3d 618 (7th Cir. 2014) (VPPA not violated
19 where disclosure was part of defendant’s “ordinary course of business” of fulfilling
20 orders and processing requests).

21 **VI. PLAINTIFFS FAIL TO ALLEGE A VIOLATION OF CALIFORNIA**
22 **PENAL CODE § 502**

23 For the reasons forth in Section VI of the Moxy Motion, which Unruly joins,
24 Plaintiffs have failed to plead violation of California Penal Code Section 502
25 because Unruly did not access computer networks or data without permission.

26
27 ⁶ Plaintiffs’ conclusory allegations that “Defendants’” supposed disclosures were not “in
28 the ordinary course of business but were done for the purpose of illegal and fraudulent
conduct” is insufficient under basic pleading standards. FAC ¶463.

VII. PLAINTIFFS FAIL TO ALLEGE A VIOLATION OF CIPA OR THE WIRETAP ACT

For the reasons set forth in Section VII of the Moxy Motion and Section VII of the Creators Inc. Motion, both of which Unruly joins, Plaintiffs have failed to plead violations of the CIPA or the Federal Wiretap Act.

VIII. NON-CALIFORNIA PLAINTIFFS' CLAIMS SHOULD BE DISMISSED ON THE BASIS OF *FORUM NON CONVENIENS*

If any of Plaintiffs' claims survive dismissal (and they should not), the claims of the Non-California Plaintiffs should be dismissed against Unruly on the basis of *forum non conveniens* for the reasons set forth in Section VIII of the Moxy Motion, which Unruly joins.

IX. LEAVE TO AMEND SHOULD BE DENIED

For those reasons set forth in Section VIII of the Creators Inc. Motion, which Unruly joins, the FAC should be dismissed without leave to amend.

X. CONCLUSION

For those reasons, the FAC against Unruly should be dismissed without leave to amend.

DATED: May 23, 2025

The Jacobs Law Firm, PC

By: 
Matthew Jacobs

*Attorney for Unruly Agency LLC and
Behave Agency LLC*

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants Unruly Agency LLC and Behave Agency LLC, certifies that this brief contains 4,801 words, which complies with the word limit of C.D. Cal. L.R. 11-6.1.

DATED: May 23, 2025

The Jacobs Law Firm, PC

By: 
Matthew Jacobs

*Attorney for Unruly Agency LLC and
Behave Agency LLC*